

§ 97-25.6. Reasonable access to medical information.

(a) Notwithstanding any provision of G.S. 8-53 to the contrary, and because discovery is limited pursuant to G.S. 97-80, it is the policy of this State to protect the employee's right to a confidential physician-patient relationship while allowing the parties to have reasonable access to all relevant medical information, including medical records, reports, and information necessary to the fair and swift administration and resolution of workers' compensation claims, while limiting unnecessary communications with and administrative requests to health care providers.

(b) As used in this section, "relevant medical information" means any medical record, report, or information that is any of the following:

- (1) Restricted to the particular evaluation, diagnosis, or treatment of the injury or disease for which compensation, including medical compensation, is sought.
- (2) Reasonably related to the injury or disease for which the employee claims compensation.
- (3) Related to an assessment of the employee's ability to return to work as a result of the particular injury or disease.

(c) Relevant medical information shall be requested and provided subject to the following provisions:

- (1) Medical records. – An employer is entitled, without the express authorization of the employee, to obtain the employee's medical records containing relevant medical information from the employee's health care providers. In a claim in which the employer is not paying medical compensation to a health care provider from whom the medical records are sought, or in a claim denied pursuant to G.S. 97-18(c), the employer shall provide the employee with contemporaneous written notice of the request for medical records. Upon the request of the employee, the employer shall provide the employee with a copy of any records received in response to this request within 30 days of its receipt by the employer.
- (2) Written communications with health care providers. – An employer may communicate with the employee's authorized health care provider in writing, without the express authorization of the employee, to obtain relevant medical information not available in the employee's medical records. The employer shall provide the employee with contemporaneous written notice of the written communication. The employer may request the following additional information:
 - a. The diagnosis of the employee's condition.
 - b. The appropriate course of treatment.
 - c. The anticipated time that the employee will be out of work.
 - d. The relationship, if any, of the employee's condition to the employment.
 - e. Work restrictions resulting from the condition, including whether the employee is able to return to the employee's employment with the employer of injury as provided in an attached job description.
 - f. The kind of work for which the employee may be eligible.
 - g. The anticipated time the employee will be restricted.
 - h. Any permanent impairment as a result of the condition.

The employer shall provide a copy of the health care provider's response to the employee within 10 business days of its receipt by the employer.

- (3) Oral communications with health care providers. – An employer may communicate with the employee's authorized health care provider by oral communication to obtain relevant medical information not contained in the employee's medical records, not available through written communication, and not otherwise available to the employer, subject to the following:
- a. The employer must give the employee prior notice of the purpose of the intended oral communication and an opportunity for the employee to participate in the oral communication at a mutually convenient time for the employer, employee, and health care provider.
 - b. The employer shall provide the employee with a summary of the communication with the health care provider within 10 business days of any oral communication in which the employee did not participate.

(d) Additional Information Submitted by the Employer. – Notwithstanding subsection (c) of this section, an employer may submit additional relevant medical information not already contained in the employee's medical records to the employee's authorized health care provider and may communicate in writing with the health care provider about the additional information in accordance with the following procedure:

- (1) The employer shall first notify the employee in writing that the employer intends to communicate additional information about the employee to the employee's health care provider. The notice shall include the employer's proposed written communication to the health care provider and the additional information to be submitted.
- (2) The employee shall have 10 business days from the postmark or verifiable facsimile or electronic mail either to consent or object to the employer's proposed written communication.
- (3) Upon consent of the employee or in the absence of the employee's timely objection, the employer may submit the additional information directly to the health care provider.
- (4) Upon making a timely objection, the employee may request a protective order to prevent the written communication, in which case the employer shall refrain from communicating with the health care provider until the Commission has ruled upon the employee's request. If the employee does not file with the Industrial Commission a request for a protective order within the time period set forth in subdivision (2) of subsection (d) of this section, the employer may submit the additional information directly to the health care provider. In deciding whether to allow the submission of additional information to the health care provider, in part or in whole, the Commission shall determine whether the proposed written communication and additional information are pertinent to and necessary for the fair and swift administration and resolution of the workers' compensation claim and whether there is an alternative method to discover the information. If the Industrial Commission determines that any party has acted unreasonably by initiating or objecting to the submission of additional information to the health care provider, the Commission may assess costs associated with any proceeding, including reasonable attorneys' fees and deposition costs, against the offending party.

(e) Any medical records or reports that reflect evaluation, diagnosis, or treatment of the particular injury or disease for which compensation is sought or are reasonably related to the injury or disease for which the employee seeks compensation that are in the possession of a

party shall be furnished to the requesting party by the opposing party when requested in writing, except for records or reports generated by a retained expert.

(f) Upon motion by an employee or the health care provider from whom medical records, reports, or information are sought, or with whom oral communication is sought, or upon its own motion, for good cause shown, the Commission may make any order which justice requires to protect an employee, health care provider, or other person from unreasonable annoyance, embarrassment, oppression, or undue burden or expense.

(g) Other forms of communication with a health care provider may be authorized by any of the following:

- (1) A valid written authorization voluntarily given and signed by the employee.
- (2) An agreement of the parties.
- (3) An order of the Industrial Commission issued upon a showing that the information sought is necessary for the administration of the employee's claim and is not otherwise reasonably obtainable under this section or through other discovery authorized by the rules of the Commission.

(h) The employer may communicate with the health care provider to request medical bills or a response to a pending written request, or about nonsubstantive administrative matters without the express authorization of the employee.

(i) The Commission shall establish an appropriate fee to compensate health care providers for time spent communicating with the employer or employee. Each party shall bear its own costs for said communication.

(j) No cause of action shall arise and no health care provider shall incur any liability as a result of the release of medical records, reports, or information pursuant to this Article.

(k) For purposes of this section, the term "employer" means the employer, the employer's attorney, and the employer's insurance carrier or third-party administrator; and the term "employee" means the employee, legally appointed guardian, or any attorney representing the employee. (2005-448, s. 6.1; 2011-287, s. 7; 2012-135, s. 2.)